

Single European railway area. Recast

2010/0253(COD) - 16/11/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 526 votes to 80, with 36 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council establishing a single European railway area (recast).

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Exclusions from the scope: Member States may exclude **railway undertakings which only operate rail-freight services on railway infrastructure managed by these undertakings before this Directive enters into force**, and which has a gauge different from the dominant network within the Member State, and is connected to a railway infrastructure on the territory of a non-EU State - as long as the managed infrastructure is not identified in Decision No 661/2010/EU of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network.

In addition, Member States may exclude from the application of the Directive **vehicles operated or intended to be operated from and to third countries**, running on a network whose track gauge is different from the main rail network within the Union.

Infrastructure manager: Parliament has clarified the essential functions of the infrastructure manager, these are: the decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths and the decision making on infrastructure charging, including determination and collection of the charges, and investments in infrastructure.

Strengthening the role and powers of the national regulatory body: the body should:

- be fully independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant;
- have the necessary administrative capacity in terms of staff and resources to ensure an open and transparent railway market;
- required to take a decision on any complaints, act on its own initiative, investigate in cases of dispute and monitor the development of the market;
- supported by a regulatory department of the Commission.

Furthermore the national regulatory body should maintain a database of their draft decisions accessible to the Commission.

Independence of essential functions of an infrastructure manager: in order to guarantee genuine independence from an umbrella organisation and other companies, it is important that every infrastructure manager should have its own IT department. As infrastructure managers must be able to take independent decisions, they must also be fully responsible for their own personnel policies. The Commission shall no later than 31 December 2012 present a **proposal for a Directive containing provisions relating to the separation of infrastructure management and transport operations** as well as a proposal for opening the domestic rail passenger market which does not detract from the quality of rail transport services and safeguards public service obligations.

However, Parliament stipulates, in managing the traffic on the network, effective cooperation between railway undertakings and infrastructure managers is essential.

Transparent separation of accounts: the strict separation of accounts between infrastructure manager and railway undertaking must be ensured. Public funds allocated to one of the fields of activity should not be transferred to another field of activity. This prohibition should be clearly displayed in the accounting rules of each field of activity. The Member State and the national regulatory body should ensure the effective application of this prohibition.

Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure and transport services shall be managed by separate entities in order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector.

Whatever the type of undertaking, all rail operators must respect legislation on social protection and health so as to avoid the practice of social dumping and unfair competition.

Sound financing of the infrastructure manager: Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union. For this purpose, they shall publish at the latest two years after the entry into force of this Directive and after consultation of interested parties and stakeholders, including local and regional authorities concerned, trade unions, sectoral unions and users' representatives, a rail infrastructure development strategy with a view to meeting future mobility needs based on sound and sustainable financing of the railway system. **The strategy shall cover a period of at least seven years and be renewable.**

Whenever revenues are not **sufficient to cover the financing needs** of the infrastructure manager, Member States shall also provide the infrastructure manager with financing consistent with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments. The infrastructure manager shall ensure that applicants are consulted in a **non-discriminatory manner** before the investment plan is approved as far as the condition of access and use, and the nature, the provision and the development of the infrastructure are concerned.

Conditions of access to railway infrastructure: in no event must the conditions of access to railway infrastructure result in it being impossible for passengers to obtain information on, or to purchase a ticket for, travel from one location to another, regardless of the number of railway transport operators providing, in whole or in part, passenger transport services between those two locations.

Conditions of access to services: where the operator of the service offers any of the range of services described in Annex III, point 1 as additional services, he shall supply them upon request to railway undertakings in a non-discriminatory manner.

When refusing access to its service facility, the operator of the service facility shall propose **an economically and technically viable alternative and justify its refusal in writing.**

An amendment stipulates that newly built maintenance and other technical facilities developed for new high-speed rolling stock, referred to in Commission Decision 2008/232/EC concerning a technical specification for interoperability relating to the rolling stock sub-system of the trans-European high-speed rail system, may be reserved to the use of one railway undertaking for **a period of ten years from the start of their operation.**

Where the service facility has not been in use for at least one year and interest by railway undertakings for access to this facility has been expressed to the operator of such a facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent for use for activities related to the railway sector unless the operator of such facility demonstrates that an on-going process of reconversion prevents its use by a railway undertaking.

Scope of market opening: the Commission shall make the necessary arrangements to monitor **technical, social and economic conditions and market developments, including employment development**, as well as compliance with relevant Union legislation in European rail transport. The Commission shall monitor the degree of market opening, employment and social conditions and the degree of harmonisation, particularly in the field of social rights, between and within Member States.

Safety: an amendment strengthens the respect of safety and labour law, making it an essential requirement to good repute which railway undertakings have to fulfil when applying for a license.

Requirements relating to financial fitness and professional competence: licensing authorities shall verify financial fitness by means of a railway undertaking's **annual accounts** or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. The requirements relating to professional competence shall be met when an applicant railway undertaking can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

The undertaking shall also demonstrate at the time of the application that it holds a **safety certificate** as defined in Article 10 of Directive 2004/49/EC.

The level of coverage deemed adequate may be differentiated to take into account the specificities of services, in particular for railway operations for **cultural or heritage purposes** running on the rail network for the general public.

Network statement: Members consider that the network statement should include information concerning: (i) the nature of the infrastructure which is available to railway undertakings and the conditions of access to it; (ii) charging principles and tariffs; (iii) principles and criteria for capacity allocation; (iv) procedures for dispute resolution and appeal. The specific details of each section can be modified by the Commission in order to allow flexibility. Moreover, where quality of infrastructure is declining this should be communicated to users to act as an early-warning system.

Scrutiny by national parliaments: without prejudice to the management independence laid down in the directive and provided that this right has been directly conferred by constitutional law at least two years before the date of entry into force of this Directive, the national parliament may have the right to scrutinise and, when appropriate, review the level of charges determined by the infrastructure manager. Such review, if any, shall ensure that charges comply with this Directive, the established charging framework and charging rules.

Principles of charging: the proposal provides that the infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train. Parliament adds that such modification of infrastructure charges shall allow for compensation for investments in retrofitting rail vehicles with the most economically viable low-noise braking technology available. Member States shall ensure that the introduction of such differentiated charges shall not have any adverse effect on the financial equilibrium of the infrastructure manager.

Improving performance: in order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays and the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

Special measures to be taken in the event of disturbance: infrastructure managers shall have action plans to deal with accidents or technical failures. An amendment provides that if a train path is cancelled for any reason other than force majeure, alternative solutions or a reimbursement of the charge shall be provided.

Cooperation between national regulatory bodies and powers of the Commission: the Commission shall set up a database to which national regulatory bodies shall provide data on all complaint procedures, such as the dates of complaints, start of own-initiative procedures, all draft and final decisions, parties involved, main issues of the procedures and problems of interpretation of railway law, etc).

European regulatory body: in light of the experience acquired through the network of regulatory bodies, the Commission shall, no later than two years after the publication of this Directive, draw up a legislative proposal establishing a European regulatory body. This body shall have a supervisory and arbitration function to deal with cross-border and international problems and to hear appeals of decisions taken by national regulatory bodies.

Annexes and the scope of the delegated acts: the amendments aim to give a stricter framework for the delegation of powers to the Commission regarding the modification of non-essential elements of the Directive for a limited duration (five years).